

Border wars and quarantine responsibilities

COMMUNITIES ARE BEING SPLIT NEEDLESSLY BY STATE-BASED QUARANTINE ZONES

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The current border wars are exactly what the Australia's founders were seeking to prevent when responsibility for Quarantine was ceded to the Commonwealth in paragraph 51 (ix) of the Constitution 120 years ago. See Box and internet link.(Commonwealth of Australia 1977).

The federating colonies recognised the need for unambiguous national responsibility for disease management. Indeed, Quarantine was up with Defence and Immigration control as a cornerstone of Commonwealth power.

Legislative powers of the Australian Parliament from the Constitution

The Parliament shall have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

- (i) trade and commerce with other countries, and among the States;
- (ii) taxation;
- (iii) bounties on export of goods;
- (iv) borrowing money on the public credit of the Commonwealth;
- (v) postal, telegraphic, telephonic, and other like services;
- (vi) defence;
- (vii) lighthouses, lightships, beacons and buoys;(navigation)
- (viii) meteorological observations;
- (ix) **quarantine;**
- (x) fisheries
- (xi) census and statistics;
- (xii) currency, coinage, and legal tender;
- (xv) weights and measures;
- (xxvii) immigration and emigration;

Overlooking their prescience takes us back to before Federation. Emergency declarations and orders, including quarantine zones, and quarantine facilities should be based on singular, clear, authoritative Commonwealth legislation, and appropriately funded.

Covid-19 should be addressed as inherently a National issue with only foreign, not State borders. The 'National Cabinet' comprised of the Prime Minister, and State and Territory leaders, plus the Chief Medical Officer, should be coordinating responses under Commonwealth authority.

The Commonwealth Government used to accept responsibility for quarantine and ran stations all around Australia until the 1990's. The current so called 'shared responsibility' is the outcome of the Commonwealth cutting costs, aided by States seeking to regain previously ceded power.

If only the Ruby Princess had offloaded at North Head, or into a latter-day equivalent Commonwealth quarantine station, as it would have done 100 years ago, rather than Circular Quay, many deaths and huge costs would have been avoided. Similarly, Point Nepean would have been the destination for 14 days under “Commonwealth accommodation” rather than “State-managed Melbourne hotels”.



Figure 1 Former Commonwealth Quarantine Station at North Head, Sydney

Without question implementation of the quarantine power must be a cooperative process, but there should also be no doubt where the ultimate responsibility lies. Currently, it is a mess. When a cargo ship arrives with infected crew, confusion reigns over who is responsible - the Commonwealth or the State where it is docked?



Figure 2 Former Commonwealth Quarantine Station at Point Nepean Melbourne (ironically closed to tourists because of the pandemic)

The Commonwealth accepts responsibility for aged-care facilities, while the States run the rest of public health, hospitals, and other State-owned facilities, albeit with significant investment from the Commonwealth Health Department.

The resources available for quarantine management vary enormously from State to State. Monitoring and enforcement are expensive and the Northern Territory, the Australian Capital Territory and Tasmania just do not have what it takes to be effective. Even wealthy Victoria relied on military support to handle its second wave.

Now that interstate movements are resuming, the need for effective national contact tracing is urgent. State-based systems don't talk to each other effectively. Communication problems seen in cross-border fire management will arise. Australia will be back to lockdowns based on state borders. Accurate, speedy national information exchange is essential.

Quarantine boundaries, such as those imposed for Covid-19, should be based on communities of interest and economic cohesion rather than State borders.

Lines drawn on maps in Whitehall in 1800s should not be the basis of disease management 200 years later. Tweed Heads and Coolangatta are bound together in communities of interest. Splitting them does not make epidemiological sense and causes extraordinary additional economic damage and tension. Dividing Broken Hill from Port Augusta is needlessly expensive. The Anangu of central Australia are coherent cultural community of interest. The legal basis of the risk management of their health should not be split by State boundaries administered thousands of kilometres away in three state capitals, Darwin, Adelaide, and Perth.

Albury and Wodonga are very definitely one community of economic and social interest, yet they too were split until very recently. Many other communities along the Murray River were also divided needlessly. It should not be allowed to recur. At least splitting Queanbeyan and Canberra was recognised as impossible, although at one stage Canberrans flying to Queensland had to declare they had not been to NSW in the preceding 14 days.

Across the nation there are too many chiefs and conflicting premiers, resulting in mixed health protection messages and confusion over authority. Ill-defined responsibility leads to events like the Ruby Princess outbreak and incompetent enforcement of hotel quarantine. The Victorian and South Australian Governments and before them the NSW Government have taken opprobrium for failures which really would be more accurately directed to the National Government.

[Some history](#)

In 1908 the Commonwealth passed the Quarantine Act giving the Governor General extraordinary regulation making power to declare quarantine zones and do just about anything to manage an emergency. Following Federation Quarantine Stations which had been operated by the colonial governments became the responsibility of the National Government.

In the 1980's I was responsible for aspects of animal disease animal management in the Australian Department of Agriculture. I noted that State Chief Veterinary officers used letterheads that carried both the State and Commonwealth crests; quarantine operations were implemented by state officers issued with Commonwealth warrant cards.

I pondered my role versus those of my State colleagues. What was the legal basis for implementing national plans to control, for example, a foot-and-mouth disease outbreak and at what point, if any, did responsibility to managing a pandemic become a state responsibility? I discussed the matter with the Solicitor General and there seemed no doubt that the Commonwealth has singular authority. He drew to my attention that the extent and definition of 'quarantine' has never been interpreted by the High Court.

The current so called 'shared responsibility' which applies today, was established following the Nairn Review 1996. The change seemed to me to be a successful exercise in cost saving by the Commonwealth. Yet this substantial transfer of responsibility and the abrogation of "*(ix) quarantine*" took place without a referendum.

A decade later, in 2008, the Beale Review into Biosecurity had another look at quarantine management. It continued the 'shared responsibility' line but did conclude that: "The Commonwealth unquestionably has Constitutional powers that allow for a much broader biosecurity reach than it currently assumes. It could, if it wished, manage almost the entire biosecurity continuum itself" (Beale *et al.* 2008).

State borders and 'communities of interest'

Most epidemiologists and ecologists, and I have been both in my professional career, would agree that State borders are especially meaningless in a quarantine / biosecurity context. This bioecological truth has been revalidated in unsuccessful attempts over the years to contain the spread not only of diseases but also other introduced pests and weeds.

The border between Tweed Heads and Coolangatta runs right through the middle of the terminal of Gold Coast airport. In theory New South Wales controls the southern end of the runway and Queensland the northern end. (Fortunately, aviation is an unquestioned Commonwealth responsibility by virtue of the Navigation power, so in this instance State-based hegemony does not apply.)

Kununurra is five times closer to Darwin than Perth. Nevertheless, under state-based quarantine, Kununurra residents and business are subject to Western Australian legislation rather than northern Australian cultural and commercial consideration. If the Commonwealth were responsible, a more effective, less expensive and economically damaging quarantine zone could be set.

Responsibility, authority, and coordination

I acknowledge that in a time of crisis it is usually better to stick to what we have rather than to create a new system or set of rules. Notwithstanding the eminent legal opinions above, now is not the time for esoteric constitutional referrals.

Nevertheless, Australia is paying the price for a lack of clarity on responsibilities. The consequences of continuing the application of State-based quarantine is worrying. Even with a vaccine, this pandemic is going to continue, and hot spots are likely to recur, probably for most of 2021.

Clarity about ultimate responsibility is needed to enable effective contact tracing, address resourcing differences between States and deliver effective management at scale. Local knowledge and priorities need to be considered and not dismissed because of jurisdictional anomalies.

Biosecurity Act 2015 could be used

Incongruously, the Commonwealth has not used the authority of its own legislation. 'Division 3 - Human health response zones, Section 113, of the Biosecurity Act 2015 could be used to establish quarantine boundaries that are based on epidemiology and risk profile of communities. It empowers the Director of Human Biosecurity to specify areas **within a State or Territory as a human health response zone**. The Director must be satisfied that it is necessary to do so for the purposes of preventing, or reducing the risk of, a listed human disease emerging, establishing itself or spreading in Australian territory or a part of Australian territory'.

Conclusion

Quarantine boundaries should be based on communities of interest and economic cohesion rather than State borders.

Shared responsibility is a dangerous myth being pursued by both the States and the Commonwealth, largely for political reasons. The lines of responsibility should be clearer in order to reduce the number of competing chiefs, jurisdictional blame, and cost shifting. Contagion is like an extremely fast fire and, just like fire, early response, communication and containment is essential. It should be based on science, best local information, and minimal politics. Australia has done well in addressing many of these attributes.

We could do even better if the Commonwealth Government accepted the responsibility for Quarantine which the Constitution says it has. It is completely understandable why the Minister for Health and the Prime Minister do not want to, but they should not be allowed evade their Constitutional responsibilities.

George Wilson - November 2020

References

Beale, R., Fairbrother, J., Inglis, A. and Trebeck, D. 2008. One Biosecurity: A Working Partnership. The Independent review of Australia's Quarantine and Biodiversity Arrangements Report to the Australian Government. Commonwealth of Australia, Canberra.

Commonwealth of Australia. Commonwealth of Australia Constitution Act (The Constitution). Available at <https://www.legislation.gov.au/Details/C2013Q00005>. Accessed: November 2020

Nairn, M.E., Allen, P.G., Inglis, A.R. and Tanner, C. 1996. Australian Quarantine: a shared responsibility. Department of Primary Industries and Energy, Canberra.